

**ANNEX III to the  
Memorandum of Agreement between  
the Transportation Security Administration and  
the Federal Aviation Administration**

**RULEMAKING, ENFORCEMENT, AND ADJUDICATION**

1. Purpose. The Transportation Security Administration (TSA) and the Federal Aviation Administration (FAA) ("the Parties") have a mutual interest in ensuring coordinated, consistent, and effective rulemakings, adjudications, and enforcement actions that may affect aviation safety and security. To achieve this purpose, the Parties agree to abide by the terms of this Annex, subject to applicable federal laws, rules, and policies.
2. Definitions. As used in this Annex:
  - a. The term "adjudication" means an agency's process for formulating an "order."
  - b. The term "coordinate" means to take action which provides reasonable notice of an agency's activities and which affords the notified agency, when possible, a reasonable opportunity to address concerns raised by such notice.
  - c. The term "order" means "a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing." 5 U.S.C. § 551(6).
  - d. The term "reasonable notice" means as soon as possible, preferably prior to action, without placing an activity in jeopardy.
  - e. The term "rule" means "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . ." 5 U.S.C. § 551(4).
  - f. The term "rulemaking" means the "agency process for formulating, amending, or repealing a rule." 5 U.S.C. § 551(5).
3. Actions.
  - a. General Coordination. The Parties will make continuing good faith efforts to coordinate on (1) addressing the common authorized missions and interests of the other Party, (2) avoiding duplication or conflict in agency authorities, (3) providing consistent and authoritative information to the U.S. Congress, stakeholders or other interested parties, and other persons, and (4) furthering the aviation safety and security interests of the United States. The above-described efforts to coordinate will commence

as soon as reasonably practicable under the circumstances, preferably at the earliest stage of development.

b. Rules, Orders, and Other Actions. In accordance with the general coordination obligations expressed in paragraph 3a, the Parties will make good faith efforts to coordinate with one another regarding the following activities:

- (1) Proposal or promulgation of a rule, or modification or rescission of an existing rule, having significant impact upon the responsibilities of the other Party.
- (2) Review or comment on any rule proposed by another agency that substantially affects the mission of the other Party or is of interest to both Parties.
- (3) Responses to any inquiry that relates to the other Party's rules or rulemaking activities that affects the missions of both Parties, by a Member of Congress, the General Accounting Office, the Office of Management and Budget, or the Congressional Budget Office.
- (4) Responses to any inquiry from any person that relates to the other Party's rules or rulemaking activities that affects the missions of both Parties, if such communication may substantially affect aviation safety or security.

c. Specific Topics of Coordination.

- (1) In accordance with section 423(a) of the Homeland Security Act of 2002, TSA will coordinate with FAA before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, airport safety, or the use of airspace. FAA agrees to coordinate with TSA on matters affecting TSA's transportation security mission.
- (2) Topics for coordination include, but are not limited to:
  - (a) Restrictions on operations at airports within the Washington, DC Metropolitan Area Special Flight Rules Area.
  - (b) Access to aircraft flight decks.
  - (c) Requirements for securing flight deck doors.
  - (d) Information concerning flight crewmembers under the influence of drugs or alcohol.

- (e) Requirements for Federal Flight Deck Officers.
- (f) Flight and cabin crew training.
- (g) Airman certificates and qualifications related to security.

d. Enforcement.

- (1) General. When taking an enforcement action that has a potential to substantially affect the other Party's mission, the Parties will coordinate enforcement responsibilities and activities related to that enforcement action. Each Party agrees to make available agency employees who are inspectors or witnesses in an enforcement action being handled by the other Party. Unless alternative arrangements have been made between the Parties, each agency will be responsible for paying the travel costs of its own employees.

- (2) Specific Types of Enforcement Actions.

- (a) The Parties agree that as new rules are adopted, they will develop procedures to address areas of overlapping jurisdiction to ensure that the affected misconduct is appropriately addressed.
- (b) TSA is considering rulemaking governing conduct actionable under 49 U.S.C. § 46302, and interference with crewmembers and assaults or threats against crewmembers or other individuals on aircraft. Following the adoption of such rules, the Parties will develop procedures to address areas of overlapping jurisdiction to ensure that the affected misconduct is appropriately addressed.
- (c) The provisions of paragraph 3d(1) apply to hazardous materials enforcement actions. All other coordination of enforcement actions relating to hazardous materials will be governed by a separate annex to the TSA-FAA Memorandum of Agreement.

- (3) Possible Violations Discovered by the Other Party. If a Party discovers information relating to a requirement enforced by the other Party, it will refer the information to the other Party.

e. Expedited Proceedings. If either Party needs to issue a rule or order that has the potential to materially affect transportation security under circumstances (such as

an emergency situation or a legal obligation requiring immediate action) that makes full coordination required under this Annex difficult, the Parties will, to the extent practicable, coordinate with one another prior to taking agency action, and in any event, will notify the other Party as soon as practicable of any such agency action taken.

f. Adjudication. In any instance in which either Party engages in any adjudication that may affect the other Party's mission, the Parties will make good faith efforts to coordinate with one another.

g. Actions Requiring Departmental Approval. In addition to the coordination described above, if either Party engages in activities which could ultimately result in an action requiring the approval of the head of the Department in which either Party operates, the Parties will follow any applicable Departmental approval and coordination policies.

4. Points of Contact. For purposes of initiating coordination required by this Annex, the point of contact for the Party taking action, or the point of contact's designee, will communicate with the other Party's point of contact or such point of contact's designee. Subject to updates by the Parties, the following persons will constitute points of contact with respect to this Annex.

TSA:

For coordination of enforcement and adjudication:

Deputy Chief Counsel for Civil Enforcement  
Transportation Security Administration  
TSA Headquarters  
701 South 12<sup>th</sup> Street  
Arlington, VA 22202

For coordination of rules and related activities:

Deputy Assistant Administrator for Analysis and External Affairs  
Transportation Security Administration  
TSA Headquarters  
701 South 12<sup>th</sup> Street  
Arlington, VA 22202

FAA:

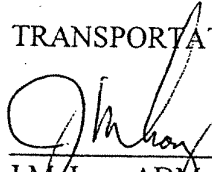
For coordination of enforcement and adjudication:

Assistant Chief Counsel for Enforcement  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591

For coordination of rules and related activities:  
Director, Office of Rulemaking  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591

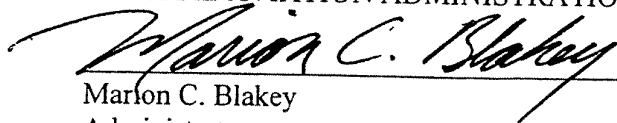
APPROVED BY:

TRANSPORTATION SECURITY ADMINISTRATION

  
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J.M. Loy, ADM  
Under Secretary of Transportation for Security

2/28/03  
Date

FEDERAL AVIATION ADMINISTRATION

  
\_\_\_\_\_  
Marion C. Blakey  
Administrator

2/28/03  
Date